

ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

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1 candidate for paisano partner, at
 2 what point do you actually make a
 3 decision on that candidate?
 4 A. After I've interview, are
 5 you asking?
 6 Q. Well, let me withdraw it.
 7 A. Okay.
 8 Q. At what point in the
 9 process do you make a decision on a
 10 particular candidate as to whether to
 11 hire?
 12 A. In some cases it's made
 13 during my interview process;
 14 especially if it's a decline. In
 15 most cases I've got a multiple number
 16 of candidates to interview. And
 17 while you're measuring who are the
 18 stronger players and who are not
 19 going to make it through the
 20 interview process, that's when those
 21 decisions happen.
 22 There are occasions when
 23 you have two people that both would
 24 work good for you and one might be

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1 recruit, how to interview. And
 2 protect us; my number one job is to
 3 protect the company.
 4 Q. And at all times during
 5 your employment with Buca, you had an
 6 understanding that age discrimination
 7 was against the law?
 8 A. Absolutely.
 9 Q. I want to talk about the
 10 recruiting process specifically
 11 regarding the paisano partner
 12 position in Allentown.
 13 A. Okay.
 14 Q. Tell me about it.
 15 A. Same process as we
 16 discussed earlier, where we start
 17 recruiting, taking resumes, working
 18 the resumes and making decisions.
 19 Q. Was there anything unusual
 20 about the process of recruiting for
 21 that position in Allentown?
 22 A. Unusual?
 23 Q. Yes.
 24 A. I don't think so. I think

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1 the better-suited player.
 2 Q. In that situation, after
 3 reviewing the first good candidate,
 4 would you hold off on a decision
 5 before reviewing the other
 6 candidates?
 7 A. Absolutely.
 8 Q. At Buca, did you receive
 9 any specific training on how to
 10 interview or recruit candidates?
 11 A. Not with Buca.
 12 Q. Have you ever received any
 13 equal employment opportunity training
 14 on --
 15 A. With Boston Market and with
 16 Chi Chi's.
 17 Q. Buca has not provided any
 18 equal employment opportunity training
 19 to you?
 20 A. We've got the manuals.
 21 We've got -- you know, I mean,
 22 there's certain job skills you come
 23 with. I mean, part of my job
 24 requirement is knowing how to

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1 the most unusual thing about it would
 2 be its location, not being in a major
 3 city, relying on the Lehigh Valley
 4 connection.
 5 The fact that it's halfway
 6 between New York City and
 7 Philadelphia requires a certain
 8 understanding of the community. It
 9 is sort of out in the middle of
 10 nowhere, you know, in a manner of
 11 speaking.
 12 Anytime you get a
 13 restaurant that's -- nobody knows
 14 their name and, you know, you're
 15 opening up in a new city, that can
 16 always be a challenge as far as
 17 education of what you're trying to do
 18 not only with recruiting but with
 19 permitting and construction and
 20 everything else.
 21 Q. When you mentioned
 22 knowledge of the area, are you
 23 referring to that portion of
 24 Pennsylvania?



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<p style="text-align: center;">186</p> <p>1 interviewed somebody else in addition 2 to Mr. Dilemani, Mr. Stenger, Mr. 3 O'Neil and possibly Mr. Ponganis? 4 A. I don't know. I mean, 5 those names that you read to me sound 6 familiar except for Joe Fryday and 7 Mike -- 8 Q. Bleckman? 9 A. Yeah, Bleckman. The other 10 guys, I can tell you they sound 11 pretty -- well, I know Owens. Was it 12 Owens? 13 Q. O'Neil. 14 A. O'Neil, I know I 15 interviewed him. But the other guy, 16 Pargonis (phonetic), sounds familiar. 17 Q. Okay. Who was the first 18 person you interviewed for the 19 Allentown position of paisano 20 partner? 21 A. No idea. 22 Q. Do you recall whether you 23 interviewed anyone in particular 24 before Mr. Dilemani for that</p>	<p style="text-align: center;">188</p> <p>1 west side of the United States, I 2 know we tried to get him hooked up 3 with Joe Tellerico, one of our DVPs 4 out there, and for some reason we 5 couldn't get that accomplished. 6 And so I believe I did a 7 phone screen, a phone interview with 8 Bey. I couldn't speak to how long 9 that was. I would say, you know, 10 based on averages and estimates, 15 11 minutes is about -- that's a pretty 12 long time on the phone. It's 13 probably about 15 to 20 minutes, 14 going over background and my needs. 15 Then I was contacted by 16 Lori, that Bey was going to be in the 17 Pittsburgh market. And I said, 18 Great, let's meet, because that's 19 great, that's great that he's going 20 to be in the same city I am. 21 And he came in to meet me 22 at our Station Square restaurant. 23 Can't tell you the date, I'm sorry 24 about that. We met at our Station</p>
<p style="text-align: center;">187</p> <p>1 position? 2 A. No, I don't recall. 3 Q. Well, this is a good a 4 place to start as any. 5 A. Let's go. 6 Q. Please describe your role 7 in the process of recruiting for the 8 paisano partner position with regard 9 to Mr. Dilemani. 10 A. My role was doing the 11 face-to-face interview. My 12 understanding was that he was 13 interviewed by Lucy Lea, I believe. 14 I know he was interviewed by Lori Van 15 Holmes, in which she set him up with 16 an interview with, I believe, Rich 17 Perelli, I believe, which he did. 18 I'm not sure what the interview 19 process -- what happened in that 20 restaurant as far as interviewing 21 process, but I do believe that they 22 met and worked in the restaurant 23 together. 24 Because Bey lived on the</p>	<p style="text-align: center;">189</p> <p>1 Square restaurant and I believe we 2 interviewed for, I'd say, 30 minutes, 3 that's an estimate again, and that 4 was the end of the interview. 5 Q. And then? 6 A. And then I continued the 7 search. I called Lori and told her 8 that I was not interested in Bey. 9 Q. Did you tell her that 10 before or after interviewing all of 11 the candidates for the position? 12 A. I don't know what -- where 13 the other people were in. What I did 14 know was that Bey was not going to 15 fit what I was looking for. 16 Q. Assuming that you 17 interviewed potential candidates 18 after your interview with Bey, do you 19 recall whether you told Lori Van 20 Holmes you were not interested in Bey 21 Dilemani before interviewing the 22 other candidates? 23 A. I told Lori within 30 24 minutes of the interview that I was</p>

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<p>190</p> <p>1 not interested in hiring Bey. 2 Q. Before speaking to anyone 3 about Bey Dilemani, did you receive 4 any documents concerning him, such as 5 a resume or an application or a 6 background check, et cetera? 7 A. I received a resume. 8 Q. Did you receive the 9 application? 10 A. No, I did not. That's the 11 one they fill out; is that which one 12 you're talking about? 13 Q. Yes. 14 A. No. 15 Q. In addition to the resume, 16 did you receive any other documents? 17 A. Only the resume. 18 Q. Did you ever speak with 19 Lucy Lea concerning Mr. Dilemani? 20 A. I don't recall. 21 Q. Do you recall speaking with 22 Ms. Van Holmes concerning Mr. 23 Dilemani? 24 A. Frequently in the interview</p>	<p>192</p> <p>1 because most likely they didn't 2 submit a resume until it was time to 3 get an interview going, until I -- 4 most likely I did not get the resume 5 until prior to doing the phone 6 interview. 7 Q. Meaning, you got the resume 8 and then did the phone interview? 9 A. Correct. 10 Q. Do you believe you received 11 Mr. Dilemani's resume after Mr. 12 Dilemani met with Rich Perelli in 13 Arizona? 14 A. I have no idea. I don't 15 know if that was all happening at the 16 same time or what. 17 Q. What do you recall about 18 your first conversation with Ms. Van 19 Holmes about Mr. Dilemani? 20 A. I don't really recall the 21 conversation, to tell you the truth. 22 Obviously she must have said 23 something positive in nature as far 24 as his qualifications, his job</p>
<p>191</p> <p>1 process, when she would give me an 2 update not only on Bey in Allentown 3 but everything she was recruiting on. 4 When we talk to recruiters, 5 we don't talk single issues. We talk 6 exactly what you're doing, what are 7 we working on, where are we hiring, 8 and there's -- there could be ten 9 people we're talking about, 15 10 people, at any given time because 11 we're talking about half a country. 12 Q. At what point in the 13 process do you recall first speaking 14 with Ms. Van Holmes about Mr. 15 Dilemani? 16 A. I have no idea how to 17 pinpoint that. 18 Q. Let me try to break it 19 down. It was before you actually met 20 with Mr. Dilemani? 21 A. Oh, yeah. Yeah. 22 Q. Was it before you received 23 his resume? 24 A. Most likely. Most --</p>	<p>193</p> <p>1 skills, his desire to move back east, 2 because otherwise I wouldn't have 3 done the phone screen. 4 So there are certain 5 assumptions you have to be made, that 6 she felt that he was a candidate we 7 needed to talk to. 8 Q. Let's talk collectively 9 about all of the phone or in-person 10 conversations you had with Ms. Van 11 Holmes prior to receiving Mr. 12 Dilemani's resume. What can you 13 recall about them? 14 A. Well, "collectively," 15 meaning as we recruit for 16 Allentown -- 17 Q. Yes. 18 A. -- as we recruit for the 19 east coast of the United States? I 20 mean, what do you want to know about? 21 Q. It's my assumption from 22 your previous answer that you cannot 23 recall specifically what you 24 discussed with Ms. Van Holmes at any</p>

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<p style="text-align: center;">202</p> <p>1 recollection of why you formed those 2 impressions of Mr. Dilemani?</p> <p>3 A. Well, I mean, his resume 4 shows that he's worked in the 5 restaurant industry and he was a 6 partner -- I don't know ex- -- I 7 can't remember exactly what it was he 8 was working for, but I believe it was 9 an Italian concept of some sort or -- 10 and he was in some sort of 11 partnership out there. And we always 12 like guys and gals that understand 13 the difference in a partnership.</p> <p>14 And I'm sure that's 15 probably what we talked about more 16 than anything else; why he was 17 leaving that -- why he was leaving 18 that concept.</p> <p>19 Q. Do you have any belief, one 20 way or the other, as to whether you 21 told Mr. Dilemani during your 22 telephone conversation that you were 23 happy to have a person with New York 24 experience?</p>	<p style="text-align: center;">204</p> <p>1 through the resume again, just sort 2 of sitting across from each other and 3 talking about the role, the concept, 4 what we're looking for, doing a new 5 store opening. That's what I recall 6 as far as the nuts and bolt of the 7 interview process.</p> <p>8 Q. Do you recall approximately 9 when the interview occurred? I know 10 you can't give me a precise date, but 11 are we talking --</p> <p>12 A. I don't think we -- we 13 weren't -- I don't believe we were 14 open for business yet, so -- being a 15 dinner concept. I would assume that 16 it was in the early afternoon. 17 That's usually when we do our 18 interviews.</p> <p>19 Q. I was actually referring to 20 what time of year.</p> <p>21 A. I'm sorry. Oh, okay. You 22 know, it wasn't snowing. So based on 23 a time line for -- I don't know. 24 Yeah, I don't know.</p>
<p style="text-align: center;">203</p> <p>1 A. I'm sure I did, because 2 that's what we were looking for, that 3 New York/Philly experience, somebody 4 who understood that market. You 5 can't take a midwest guy and put him 6 in Philadelphia. You can, but you'll 7 fail.</p> <p>8 Q. Do you recall any 9 conversations with Ms. Van Holmes 10 prior to your actual in-person 11 interview with Mr. Dilemani, other 12 than the ones we've discussed?</p> <p>13 A. Other than the ones we've 14 discussed? No.</p> <p>15 (A discussion was held off 16 the record.)</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q. What do you recall about 19 your in-person interview with Mr. 20 Dilemani?</p> <p>21 A. I recall, again, 22 probably -- well, I guess not -- 23 probably's not the right word you 24 want to hear. But I recall going</p>	<p style="text-align: center;">205</p> <p>1 Q. Is it possible it was the 2 summer of 2000?</p> <p>3 A. The summer of 2000? I 4 think that would probably be close. 5 I mean, I don't believe it was, you 6 know, winter in Pittsburgh at the 7 time. So summer, spring or fall, 8 yeah. I would -- I hate to narrow it 9 down to such a degree. I don't have 10 his file in front of me. So I don't 11 know.</p> <p>12 Q. Can you recall anything 13 specifically that occurred during 14 your in-person interview of Mr. 15 Dilemani?</p> <p>16 A. Specifically?</p> <p>17 Q. Yes.</p> <p>18 A. What would you like to 19 know?</p> <p>20 Q. Everything you remember.</p> <p>21 A. The biggest thing I 22 remember is that the interview went 23 30 minute, maybe 20, 25, 30 minutes. 24 I found Bey very arrogant and felt he</p>

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<p style="text-align: center;">206</p> <p>1 lacked humility, and did a 30-minute 2 interview. 3 Q. Do you recall what led you 4 to the conclusion that he was 5 arrogant? 6 A. It must have been his 7 actions, his verbiage, what he said 8 and how he said it. My perception 9 was he was very arrogant. 10 Q. Did he dress appropriately? 11 A. He dressed very sharply. I 12 believe the blue blazer he wore and 13 tan pants. Very smartly dressed. 14 Q. He appeared to have good 15 hygiene? 16 A. I -- from my vantage point, 17 he had very good hygiene. 18 Q. Did he have a good 19 handshake? 20 A. I believe he did. 21 Q. Was he respectful to you 22 during the interview? 23 A. I don't feel he showed any 24 personal disrespect, no. I think he</p>	<p style="text-align: center;">208</p> <p>1 previously, in his verbiage, in the 2 way he talked about what he could do, 3 what he was capable of done, what had 4 happened to him in the past. 5 It is very tough to define 6 while -- you can pull something out 7 of Webster's version of what 8 arrogance is and what the lack of 9 humility is. There was a pompousness 10 about him that he portrayed. And as 11 an interviewer, it's not something 12 I'm looking for in Buca diBeppo. 13 Q. When you say "lack of 14 humility," are you using that to mean 15 something different than arrogant in 16 the context of Mr. Dilemani? 17 A. I think there is a slight 18 difference in it. 19 Q. Okay. Then please tell me 20 everything you can remember that led 21 you to the conclusion that Mr. 22 Dilemani lacked humility. 23 A. I can't give you item by 24 item. There's no way I can do that.</p>
<p style="text-align: center;">207</p> <p>1 was very cordial. 2 Q. Well-mannered? 3 A. Except for the arro -- I 4 mean, it depends on what you define 5 as manners. I think that -- I mean, 6 did he swear? No. Did he not pay 7 attention? Did he not listen? Did 8 he not say please, thank you? He was 9 fine. He had all those manners 10 covered. 11 Q. Did he come in and put his 12 feet on your desk? 13 A. We sat at a table. So no, 14 he did not. 15 Q. Did he put his feet on the 16 table? 17 A. No. He sat properly. 18 Q. The reason that I'm asking 19 all of these questions is because I'm 20 trying to see if I can jog your 21 memory as to what led you to the 22 conclusion that he was arrogant. 23 A. It must be in the way he 24 presented himself, like I said</p>	<p style="text-align: center;">209</p> <p>1 Q. Was it in his manner of 2 speaking? 3 A. Not -- maybe not the manner 4 of speaking, but how he spoke about 5 the people he'd worked with, how he 6 presented his resume, how he 7 presented himself. 8 It's a very tough thing to 9 say He said this, therefore I form 10 this opinion. It was not that easy 11 to come up with the ABCs, especially 12 something that I have long forgotten 13 about and moved forward on. 14 What I can tell you is 15 that, you know, between -- in that 16 first 15 minutes or so, as we settled 17 in together, that I quickly saw that 18 this was not an individual that 19 would, in my mind, fit our 20 organization. 21 Q. So please tell me in detail 22 all of the reasons that led you to 23 the decision not to hire Mr. 24 Dilemani.</p>

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1 A. I just gave them to you.
 2 There's not a whole lot of detail.
 3 There's some things that are in this
 4 world black and white, and that's one
 5 of them. And he was very arrogant in
 6 the way he handled the interview.
 7 That's the detail that I can give
 8 you. And that was very evident,
 9 quickly.

10 Q. Do you recall whether you
 11 took into account Ms. Van Holmes'
 12 feedback concerning Mr. Dilemani at
 13 all in deciding not to hire him?

14 A. No, because I don't believe
 15 she called me and said, I'm not -- I
 16 don't think we should hire this guy.
 17 That's not -- that was never a
 18 conversation. She set me up for the
 19 interview. So obviously if there was
 20 a negative spin to it, that would
 21 have been a mistake to set me up for
 22 the interview.

23 Q. Who made the decision not
 24 to hire Mr. Dilemani?

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1 conversation that took place during
 2 your interview of Mr. Dilemani, did
 3 you consider any other information at
 4 all in deciding not to hire him?

5 A. No. There's no other
 6 information to consider.

7 Q. Was there anything about
 8 the resume that led you to decide not
 9 to hire Mr. Dilemani?

10 A. No, otherwise it wouldn't
 11 have gotten to that point. For
 12 example, if it would have said I
 13 worked at Macy's department store,
 14 while he might be a great manager for
 15 Macy's, the resume would have said
 16 this is an exercise in futility. We
 17 wanted somebody in restaurants, in
 18 ownership. So no, the answer is no.

19 Q. During the interview, did
 20 you form an opinion as to whether you
 21 liked Mr. Dilemani personally?

22 A. Now, that's a tough
 23 question. I would have to say that
 24 the answer is I did form an opinion

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1 A. I did.
 2 Q. Did anybody else play a
 3 role in that decision?
 4 A. To not hire him?
 5 Q. Yes.
 6 A. No.
 7 Q. Tell me all of the
 8 documents that you considered when
 9 deciding whether to hire Mr.
 10 Dilemani.

11 A. I consider all documents
 12 when we determine to hire somebody.
 13 When we determine to not hire
 14 somebody, it can stop real quick.
 15 Just like the recruiter can screen
 16 out somebody on a phone in five
 17 minutes because they don't have the
 18 qualifications, documents that I had
 19 in my possession were the resume.
 20 And my skill as an interviewer said
 21 this is not a guy that I want working
 22 for me, bottom line.

23 Q. Aside from your review of
 24 Mr. Dilemani's resume and the

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1 about him.
 2 Q. What was that opinion?
 3 A. That he is an arrogant
 4 person and, by nature, I am not
 5 attracted to arrogant people. You
 6 would have to draw your own
 7 conclusion whether that means did I
 8 like him. I wasn't looking for a
 9 friend, I was looking for a partner;
 10 two different people.

11 Q. In looking for a partner,
 12 presumably you look for someone you
 13 feel that you can work with.

14 A. Correct.

15 Q. Do you look for somebody
 16 that you like personally as well?

17 A. I think that is a factor.

18 It would be dishonest to say it's not
 19 a factor. But I can tell you right
 20 now that I don't -- my buddies don't
 21 work for me. People that get the job
 22 done work for me. I don't have to
 23 like somebody a lot to have them work
 24 for me. I have to respect them and



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<p>214</p> <p>1 have to believe in the basic core of 2 who they are. 3 Q. What I'm trying to figure 4 out is that, if you found Mr. 5 Dilemani to be arrogant, how did you 6 feel that would affect his 7 suitability for a paisano partner? 8 A. It would not. 9 Q. How specifically? 10 A. It's a guest-oriented 11 business. 12 Q. Meaning? 13 A. Meaning we work with 14 people. Our job is to work with 15 people, both developing management, 16 hourly and guests to drive the 17 business. We have interpersonal 18 meetings with recruiters, with 19 marketing people, with vendors. I 20 didn't want him working for us. 21 Q. Are you saying that you 22 formed an opinion that Mr. Dilemani 23 would not work well with people who 24 reported to him?</p>	<p>216</p> <p>1 who doesn't like growth and 2 opportunity; otherwise, why would you 3 come with a new company. 4 Q. In Bey's case, was it a 5 factor in your decision not to hire 6 him -- 7 A. No. 8 Q. And I want to make sure I 9 finish the question. 10 A. Oh, I'm sorry. I thought 11 you were going to follow. 12 Q. When you answered, it 13 pretty much was a question. You had 14 no way of knowing I was going to 15 continue. So that's fine. 16 A. Go like this (indicating). 17 Q. Did you form an opinion as 18 to whether Bey was seeking a position 19 at a higher level than paisano 20 partner? 21 A. I think he presented 22 himself that he wanted to be in a 23 regional spot, if I recall. 24 Q. Did that have any bearing</p>
<p>215</p> <p>1 A. I formed the opinion based 2 on the person he presented to me in 3 an interview, which was he was not 4 going to work for me and Buca 5 diBepo. 6 Q. Did you form an opinion 7 during the interview as to whether he 8 wanted your job? 9 A. I don't know. I'm not 10 afraid of somebody taking my job. I 11 just hired a girl to take my job. So 12 I'm not afraid to have somebody take 13 my job. You need people like that. 14 I believe he did make it 15 clear that he would like to grow with 16 the company, but I won't say that 17 that was something singular to Bey. 18 I very rarely interview people that 19 say, I don't want to grow and I don't 20 want opportunity. I think I would 21 hire them on the spot, because they'd 22 probably be the most honest person 23 I've met. 24 I very rarely meet somebody</p>	<p>217</p> <p>1 on your decision not to hire him? 2 A. No. No. I mean, it's not 3 abnormal to seek -- to interview 4 people that want more. 5 Q. During your personal 6 interview with Mr. Dilemani, did you 7 ask him if he was willing to go to 8 Buffalo for training? 9 A. I don't recall that as -- 10 Buffalo has never been a training 11 store. But I don't recall that. 12 I -- 13 Q. It's possible? 14 A. It's possible. Now, he 15 might have -- we might have said, Do 16 you want to go up there and work with 17 Sal, who had been around with the 18 company for a while, to, you know, 19 feel the restaurant out for a -- but 20 not -- I don't believe we were -- we 21 weren't doing any training there. So 22 I don't recall that. 23 Q. Do you recall -- 24 A. I'm not ruling it out. I</p>

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1 out and faxed it to me once in a
2 while.

3 Q. Is there a form that
4 divisional vice presidents are
5 provided to use for purposes of
6 evaluating a candidate after an
7 interview?

8 A. Not that I'm aware of. Do
9 you mean something we send back and
10 say yes, we're going to pursue or no,
11 we're not going to?

12 Q. Something that evaluates
13 the candidate on various qualities?

14 A. Not that I'm aware of.
15 That the DVP fills out?

16 Q. Yes.

17 A. Not that I'm aware of.

18 Q. Okay. I'm done with that
19 document. When I say "is," did you
20 understand my question to mean, or
21 has ever been a form like that?

22 A. And again, my awareness?
23 I'm not --

24 Q. Yes.

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1 A. Correct.

2 Q. What do you recall about
3 the recruiting process as it applied
4 to Mr. Stenger?

5 A. Tim's resume came to us --
6 it came to our COO, Len Ghalani. Tim
7 had been a director of operations
8 with Schuler's restaurant, and
9 Schuler's is sort of an old icon, one
10 of the famous old restaurateurs, very
11 respected in the north.

12 And he had done a lot of
13 good things with them, including
14 being a member of the National
15 Restaurant Association, menu
16 development, very instrumental and
17 key in the restaurant industry.

18 I got a call from Len
19 Ghalani saying, I've got a great
20 guy's resume and I know you're
21 looking for somebody in Allentown.

22 I believe Tim went to
23 either college or high school in the
24 Lehigh Valley. His parents lived

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1 A. I'm not saying no, because
2 I don't know. I've never used a form
3 like that, that I know of, and I have
4 not had anybody, I don't believe, ask
5 me for a form like that.

6 Q. Okay.

7 A. Now, I know we've used
8 forms like that in the earlier days,
9 but to what extent I don't know as a
10 company. I believe -- I'm unsure if
11 they use the arrows still today.

12 Q. Okay. If you don't know,
13 you don't know.

14 A. I don't know. I just want
15 to make sure that we are clear on
16 that.

17 Q. Thank you. You ultimately
18 hired Tim Stenger for the position of
19 paisano partner in Allentown,
20 Pennsylvania; right?

21 A. Correct.

22 Q. And that's the position you
23 understood Mr. Dilemani was applying
24 for?

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1 there while his dad did something, I
2 don't know what it was. And Tim
3 wanted to relocate back east, where I
4 believe his grandmother lives.

5 And so we started the
6 interview process just like we do
7 normally. I do not know if Lori did
8 the interview or not. I think, but I
9 don't know. But it was either her or
10 Stephanie.

11 Q. What is Stephanie's last
12 name?

13 A. Comeaux, Comeaux. I don't
14 remember where I interviewed Tim.

15 Q. Before we get to the
16 interview.

17 A. Okay.

18 Q. Do you recall any
19 conversations with anyone, other than
20 what you have just described,
21 concerning Mr. Stenger that took
22 place before your interview?

23 A. Yeah. The biggest
24 conversation I remember would be with



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1 THE WITNESS: Mr.

2 Dilemani --

3 MR. GERHAN: -- and
4 foundation.5 THE WITNESS: -- his
6 experience in the restaurant business
7 had nothing to do with him losing the
8 job. He didn't get the job because
9 of the way he interviewed. He was
10 arrogant and somebody I did not want
11 to work in our company.12 It had nothing to do with
13 his experience. It had nothing to do
14 with the way he dressed. He had
15 manners, he was cordial, he shook my
16 hand firmly. He was arrogant, and I
17 won't have anybody working for me
18 that is like that, bottom line, I
19 don't care how much experience they
20 have.

21 BY MR. GOLDBERG:

22 Q. Have you ever considered
23 Mr. Dilemani for any position other
24 than paisano partner in Allentown?

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1 know how to interview, apparently.
2 He is somebody I don't want working
3 for our company.

4 BY MR. GOLDBERG:

5 Q. Have you finished telling
6 me about all of the conversations you
7 had with anybody concerning your
8 decision to hire Mr. Stenger?9 A. Well, I mean, I covered the
10 conversation with Len Ghalani. I
11 don't recall but I believe Lori Van
12 Holmes or Stephanie, whatever,
13 interviewed him and done references
14 on him; which I believe the Schuler
15 family was his references.16 Additional people? I don't
17 know. I think he worked in Chicago,
18 as far as the on-the-job interview.
19 And I don't -- I can't say this a
20 hundred percent, but I think it was
21 Aric Spiczka who he worked with, one
22 of our paisano partners in Chicago,
23 for the on-the-job interview like Bey
24 had with Mr. Perelli.

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1 A. No.

2 Q. Have you had any paisano
3 partner openings subsequent to the
4 one filled for Allentown?

5 A. In Philadelphia?

6 Q. In your region.

7 A. In Philadelphia?

8 Q. Yeah.

9 A. Yeah. Reading,

10 Pennsylvania. Exton, Pennsylvania.
11 We filled the Jenkintown position,
12 the downtown Philly position, and
13 we're currently looking for a partner
14 for Cherry Hill.15 Q. Did you consider Mr.
16 Dilemani for any of those positions?

17 A. No.

18 Q. Why not?

19 A. For reasons stated prior.

20 Q. Please explain them.

21 A. He's arrogant.

22 MR. GERHAN: Objection.

23 Asked and answered.

24 THE WITNESS: He doesn't

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1 Q. During the entire course of
2 your career at any of your past
3 employers, can you recall hiring a
4 person who at the time was at least
5 50 years old?

6 A. Yes.

7 Q. How many people can you
8 recall hiring during --9 A. I don't know. I mean, the
10 first one that comes to mind is
11 Dennis up in Allentown, who's 54.

12 Q. At the time he was hired?

13 A. The restaurant's been
14 opened two and a half years. So he
15 must have been 52.

16 Q. Dennis who?

17 A. Sifiles, S-i-f-i-l-e-s.

18 Q. And the position was for
19 what?

20 A. Assistant general manager.

21 Q. Can you recall anybody
22 else?23 A. Well, I'm not sure how old
24 Vinnie was when I hired him, because

ORAL DEPOSITION OF JAMES M. COWLER, 1/9/03

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1 I'm guessing at his age. So I
 2 don't -- I really don't know. I'm
 3 thinking Buca. So Buca, I don't
 4 know.

5 Boston Market, I can think
 6 of a couple folks in the hourly
 7 ranks.

8 Q. Any in the management
 9 ranks?

10 A. I'm not sure how old Susan
 11 Baux was, I have no idea. She's
 12 working for US Air now. I don't
 13 recall. Yeah, I'm sorry. I don't
 14 recall.

15 Q. Do you have an estimate as
 16 to how many people over 50 years old
 17 you have hired in the course of your
 18 career?

19 MR. GERHAN: Objection.
 20 Asked and answered.

21 THE WITNESS: You know,
 22 based on this moment right now --

23 BY MR. GOLDBERG:

24 Q. Yes.

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1 Q. How old did you think Bey
 2 was when you interviewed him?
 3 A. You know, I didn't -- I
 4 don't even consider it. That's
 5 probably the disgrace of being here
 6 for me, is that it's not something I
 7 consider.

8 I take it as an extreme
 9 insult, for the record, that I'm
 10 here. Extreme. Call me anything,
 11 but don't call me discriminatory, you
 12 know, put me in a corner.

13 So I was shocked, to say
 14 the least, that I was being called
 15 here to talk about -- at the
 16 fact-finding session, that it was
 17 age. I was shocked and insulted.
 18 And probably that's the canned
 19 version that most people would tell
 20 you, as an attorney or as a referee
 21 or as a court, but I don't care about
 22 that.

23 What I care about is
 24 results, respect, people who can do

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1 A. -- ten or less in the
 2 management ranks. But again, I don't
 3 know.

4 Q. To your knowledge, is there
 5 something about a recruiting process
 6 at Buca as it existed in the year
 7 2000 that would not attract
 8 applicants who are 50 years old or
 9 more?

10 A. Would not attract?

11 Q. Yes.

12 A. I don't know what we would
 13 have. I don't know of anything that
 14 would say, Stay away if you're over
 15 50.

16 Q. Let me ask you this way.
 17 While at Buca, did you receive
 18 applications from qualified people
 19 who were over 50 years old for a
 20 paisano partner?

21 A. I have no idea. We don't
 22 ask the age on the -- people don't
 23 put their age on resumes, you know.
 24 I have no idea.

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1 the job. And again, that's probably
 2 canned and what most people are
 3 supposed to say.

4 Q. When did you first found
 5 out that Mr. Dilemani had asserted
 6 allegations of age discrimination?

7 A. When I got called by
 8 Jennifer Percival to fly to
 9 Philadelphia with Dan and herself
 10 to --

11 Q. Referring to Dan Gerhan,
 12 your attorney?

13 A. Yes, yes. I think that was
 14 the first time I heard about -- she
 15 might have called me a month before
 16 or two months before, and I just
 17 thought, Wow, where did that come
 18 from. Because nothing clicked. You
 19 know what I'm saying? Nothing
 20 clicked, like -- I mean, I just -- I
 21 couldn't -- I just -- it didn't, it
 22 didn't click. Nothing clicked. I
 23 was like, Wow, for what.

24 As a matter of fact, when I



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1 came to court I didn't know it was
 2 age discrimination. I just heard
 3 discrimination. I'm like, Well, what
 4 could that possibly be for. So it
 5 took me by surprise, sure.

6 Q. Were you aware that Buca
 7 had submitted materials to the
 8 Pennsylvania Human Relations
 9 Commission in Buca's defense in
 10 relation to the claims of age
 11 discrimination that Mr. Dilemani had
 12 asserted?

13 A. I was probably notified
 14 that somebody had filed. But when
 15 you're in a company that's across the
 16 country, you're going to have
 17 unemployment, you're going to have
 18 disability, you're going to have -- I
 19 mean, that's what the people in human
 20 resources do, they handle these
 21 things and get the documentations
 22 that were requested by various
 23 agencies.

24 I don't think I was

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1 really -- I don't recall really being
 2 brought in, to my attention.

3 Q. Have you ever reviewed any
 4 of the materials that Buca submitted
 5 to the Pennsylvania Human Relations
 6 Commission?

7 A. I have never seen any --
 8 I've not been copied on any materials
 9 that were sent, that I know of. I
 10 mean, I don't -- I don't recall
 11 seeing any documentation.

12 Q. Did you play any role in
 13 the drafting of any of those
 14 materials?

15 MR. GERHAN: Objection.

16 THE WITNESS: Not that --

17 MR. GERHAN: Calls for
 18 speculation.

19 THE WITNESS: I don't
 20 recall. I mean, if somebody took a
 21 verbal statement from me at the time
 22 I was notified that we were going to
 23 see the -- the inquiry that we went
 24 to the first time.

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1 But I don't reme -- I
 2 never wrote a written statement or
 3 anything like that. Somebody might
 4 have asked, Hey, do you have any
 5 notes or anything, but, you know, I
 6 don't take notes when I do
 7 interviews.

8 BY MR. GOLDBERG:

9 Q. Do you recall talking to
 10 anybody after Mr. Dilemani had
 11 asserted his claims of age
 12 discrimination regarding the reasons
 13 you decided not to hire him?

14 A. I would --

15 MR. GERHAN: I'm going to
 16 object and make sure that you don't
 17 reference any conversations with
 18 counsel.

19 THE WITNESS: Okay.

20 BY MR. GOLDBERG:

21 Q. I'm not asking you -- let
 22 me withdraw and start again. I'm not
 23 asking you at this point for the
 24 substance of any conversations.

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1 A. Okay.

2 Q. I just want to know whether
 3 you did have any conversations.

4 A. After I was notified?

5 Q. That Mr. Dilemani had
 6 asserted claims of age
 7 discrimination --

8 A. Right.

9 Q. -- in which you were asked
 10 your reasons as to why you did not
 11 hire him.

12 MR. GERHAN: And same
 13 objection as to conversations with
 14 counsel. Conversations with other
 15 people you can testify to.

16 THE WITNESS: Okay. Yeah,
 17 I'm sure I did. Lori Van Holmes knew
 18 why I turned down Bey, because I let
 19 her know.

20 As a reference point,
 21 Jennifer Percival may have asked, you
 22 know, This is what, you know, Lori
 23 said. But to my failing, I didn't
 24 think it was a serious thing, and not



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1 don't remember his resume. So
 2 nothing with Mark do I remember.
 3 Beckman -- of course, I
 4 haven't seen the release or the
 5 application on these people. I don't
 6 get copies of that. I don't recall
 7 Michael -- Bleeman, I'm sorry,
 8 Bleeman's, which is surprising.
 9 Rick O'Neil, obviously I
 10 recall his resume. I've not seen the
 11 pre-screen, to the best of my
 12 knowledge. I mean, I remember
 13 Richard O'Neil from his resume
 14 obviously because he worked for the
 15 Back Bay Group, which is a guy that I
 16 had worked with in Rain Forest, and
 17 we had already talked about knowing
 18 him.
 19 And Joseph Fryday. I don't
 20 remember meeting him, and I do work
 21 with National Hospitality a lot;
 22 they're the recruiters that I use a
 23 lot of times.
 24 I don't know if I answered

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1 Q. When I say "whether to hire
 2 an applicant," it means hire them or
 3 not.
 4 A. I just told you, the
 5 documentation on application and
 6 release for background check I don't
 7 get.
 8 Q. I understand. Let me back
 9 up. I understand that you have not
 10 seen certain documents that are part
 11 of P-21.
 12 A. Okay.
 13 Q. What I'm asking you now is,
 14 which documents did you see that
 15 played a role in your decision
 16 whether to hire any particular
 17 applicant?
 18 A. The resumes that I
 19 recognize are Bey's and Rick
 20 O'Neil's. The resume that sounds
 21 familiar is Mark Pargonis (phonetic,)
 22 and the other two I do not recall.
 23 The only articles in
 24 here -- the only sheets in here that

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1 your question, though. I'm sorry.
 2 Q. I think you did, but let me
 3 ask again just to make sure. Have
 4 you now finished identifying all
 5 documents that are part of Exhibit
 6 P-21 that played a role in your
 7 decision whether to hire any
 8 particular applicant?
 9 MR. GERHAN: I'm going to
 10 object because I think it
 11 mischaracterizes what the witness
 12 said. You may answer.
 13 BY MR. GOLDBERG:
 14 Q. Then I'm going to withdraw
 15 the question and ask you, have you
 16 identified every document that is
 17 found in P-21 which played a role in
 18 your decision whether to hire an
 19 applicant?
 20 A. Hire an applicant?
 21 Q. Yes.
 22 MR. GERHAN: Object to the
 23 form of the question.
 24 BY MR. GOLDBERG:

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1 I recognize as material I have seen
 2 before is page two, and I can't tell
 3 you why that seems familiar --
 4 Q. Right.
 5 A. -- and the actual resumes
 6 in here.
 7 Q. Okay.
 8 A. But I don't get the -- as a
 9 rule, I do not get the disclosure,
 10 there's no need for me to have it.
 11 And there's no need for me to have
 12 the application.
 13 Q. Okay.
 14 A. I hope that answered it,
 15 because --
 16 Q. I think so.
 17 A. -- I don't feel like I did.
 18 So...
 19 Q. If you'd like, you could
 20 try again. I feel comfortable --
 21 A. No. I don't want to go
 22 over it.
 23 Q. -- with your answer.
 24 A. Okay.



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1 seeing there.
 2 A. Okay. Who put this
 3 together?
 4 MR. GERHAN: Let him --
 5 THE WITNESS: Buca. Okay.
 6 MR. GERHAN: Jim, let him
 7 ask --
 8 THE WITNESS: Okay, I'm
 9 sorry.
 10 MR. GERHAN: -- the
 11 questions.
 12 BY MR. GOLDBERG:
 13 Q. Are you familiar with these
 14 background check forms generally?
 15 A. Yes.
 16 Q. Am I correct that generally
 17 the second page of these background
 18 forms include identifying information
 19 about the person being checked?
 20 MR. GERHAN: Objection.
 21 Lack of foundation.
 22 THE WITNESS: I have no
 23 idea. I have no idea.
 24 BY MR. GOLDBERG:

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1 identifying information about the
 2 person other than their name being
 3 listed at the top of the form?
 4 MR. GERHAN: Objection.
 5 Lack of foundation. Assumes facts
 6 not in evidence
 7 THE WITNESS: I don't use
 8 these documents from getting the
 9 document and looking at it page by
 10 page. It's a big document that --
 11 the only thing I want to know from
 12 our recruiters -- I don't -- I don't
 13 take this. I don't get this at my
 14 home. Once in a while they'll fax
 15 them to me or send it to my computer,
 16 but I don't want it because it's like
 17 20-some pages.
 18 I want to know if there's
 19 been a major bankruptcy which would
 20 enable the person to run our
 21 business, and I want to know if there
 22 is a DUI that could impede us from
 23 getting a liquor license in states
 24 like Pennsylvania which, I'm sure

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1 Q. How do you know who this
 2 background check is for?
 3 MR. GERHAN: Objection.
 4 Lack of foundation.
 5 THE WITNESS: Because their
 6 name is on top of it. I'm looking
 7 right at it.
 8 BY MR. GOLDBERG:
 9 Q. In P-19, I assume you're
 10 referring to the top of the document
 11 which says, "Dilemani, Bey K."
 12 A. Correct.
 13 Q. From this document, on this
 14 first page of the document, can you
 15 tell you've got the right Dilemani,
 16 Bey K?
 17 A. Can I tell --
 18 Q. Yes.
 19 A. -- based on what you're
 20 putting in front of me?
 21 Q. Yes.
 22 A. I assume so, yeah.
 23 Q. In your experience, do
 24 these documents contain any more

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1 you're aware of, you investigate the
 2 partner to get the liquor license,
 3 and that can stop you from getting
 4 the liquor license, either achieving
 5 it or renewing it. I don't even go
 6 through this.
 7 BY MR. GOLDBERG:
 8 Q. I understand that --
 9 A. Okay.
 10 Q. -- you've explained how you
 11 use background checks, and I
 12 appreciate that testimony. I'm
 13 asking you a question now not based
 14 on how you use the document --
 15 A. Okay.
 16 Q. -- but based on your
 17 knowledge of the document from having
 18 seen background checks.
 19 A. Okay.
 20 MR. GERHAN: You haven't
 21 established that he has any knowledge
 22 about this particular document. So I
 23 will object to this testimony.
 24 MR. GOLDBERG: Okay.



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